

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**CHAO XIANG YAO, #97677486,** )  
Petitioner, )  
 )  
v. ) ) **3:08-CV-0975-G**  
 )  
**WARDEN ROLLING PLAINS DETENTION** )  
**CENTER, et al.,** )  
Respondents. )

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the District Court in implementation thereof, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge are as follows:

**FINDINGS AND CONCLUSIONS:**

Type of Case: This is a *pro se* petition for habeas corpus relief filed by a detainee of the Bureau of Immigration and Customs Enforcement (ICE) pursuant to 28 U.S.C. § 2241, et seq.

Parties: Petitioner is presently confined at the Rolling Plains Detention Center in Haskell, Texas. Respondents are the Warden of the Rolling Plains Detention Center and Dallas District Director of ICE. The court issued process in this case.

Statement of Case: On July 12, 2003, Petitioner, a citizen of China, entered the United States without inspection. On June 15, 2007, he was convicted of alien smuggling in a federal court in New York and sentenced to 3-years of incarceration. On December 4, 2007, a Final Administrative Removal Order was issued. Petitioner, however, was not transferred to ICE's custody until March 7, 2008, when he completed service on his federal sentence.

In this action, Petitioner claims that his continued detention pending removal violates his

due process rights because China issues travel documents to removed persons only after a very extensive and slow administrative process. Respondents moved to dismiss the petition as premature because it was filed before the expiration of the six-month removal period. Petitioner did not file a reply. Most recently, on September 15, 2008, he filed a new habeas corpus petition. *See Yao v. District Director of ICE*, 3:08cv1618-G (N.D. Tex.).

Findings and Conclusions: Petitioner's post final removal detention claim appears premature under *Zadvydas v. Davis*, 533 U.S. 678 (2001). In any event, the filing of his new habeas corpus petition renders this prior petition moot.

RECOMMENDATION:

For the foregoing reasons, it is recommended Respondents' motion to dismiss be GRANTED and that this habeas action be DISMISSED without prejudice.

A copy of this recommendation will be transmitted to Petitioner and counsel for Respondents.

Signed this 18<sup>th</sup> day of September, 2008.



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WM. F. SANDERSON, JR.  
UNITED STATES MAGISTRATE JUDGE

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten days after being served with a copy of this recommendation. Pursuant to *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*), a party's failure to file written objections to these proposed findings of fact and

conclusions of law within such ten-day period may bar a *de novo* determination by the district judge of any finding of fact or conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjected to proposed findings of fact and conclusions of law accepted by the district court.